A fortiori the action lies in those numerous jurisdictions of this country where, in accordance with the so-called American rule, an action lies for the malicious prosecution of a civil suit, where no special damage ensues. *Closson* v. *Staples*, 42 Vt. 209. That this old common-law right of action is distinct from the remedy on the injunction bond, is clear both on principle and authority. The former arises *ex delicto*, whereas the latter is dependent solely upon the terms of the contract and the amount of recovery is limited thereby. *Anderson* v. *Provident Life & Trust Co.*, 26 Wash. 192; *Lawton* v. *Green*, 64 N. Y. 326. *Contra*, *Gorton* v. *Brown*, 27 Ill. 489. But see *Crate* v. *Kohlsaat*, 44 Ill. App. 460.

MANDAMUS — ACTS SUBJECT TO MANDAMUS — ELECTION OF OFFICER AT WILL, WHEN OFFICE IS OCCUPIED. — A board of justices had the duty of electing a clerk, removable at its pleasure. Certain ineligible justices voted, converting what would otherwise have been a tie between A and B into a plurality for A, and A entered upon the office. B applied for a writ of *quo warranto* against A and *mandamus* against the justices, requiring them to elect a clerk. *Held*, (1) that the writ of *quo warranto* should not issue; (2) that the writ of *mandamus* should issue. *The King* (*Roycroft*) v. *Justices of Schull, etc.*, [1910] 2 Ir. 601. See NOTES, p. 313.

MECHANICS' LIENS — EFFECT OF STOP NOTICE WHEN CONTRACTOR SUBSEQUENTLY DEFAULTS. — The plaintiff, a subcontractor, served a stop notice on the defendant, the owner, at a time when the instalments due from the defendant to the original contractor were greater than the amount of the plaintiff's claim. The contractor subsequently defaulted, and the defendant completed the building under a provision in the contract. The cost of doing so, with the instalments paid to the contractor before service of the stop notice, if deducted from the contract price, left a balance smaller than the plaintiff's claim. *Held*, that the plaintiff can recover the full amount of his claim. *Stone Post Co.* v. *Corcoran*, 77 Atl. 1031 (N. J., Sup. Ct.).

Mechanics' liens on realty may be divided into two classes: those attaching directly, irrespective of the contract between the owner and builder, and those where the subcontractor is subrogated to the contractor's claim. See *Hunter* v. *Truckee Lodge*, 14 Nev. 24. In case of the contractor's default a lien of the second type attaches only to the extent of the difference between the cost of completion to the owner and the amount of the price unpaid. *Van Clief* v. *Van Vechten*, 130 N. Y. 571; *Campbell* v. *Coon*, 149 N. Y. 556. The New Jersey statute is of the second type. N. J. LAWS OF 1898, c. 226. It contains, however, a provision giving the subcontractor the supplementary remedy of a lien on the amount due or to become due from the owner to the contractor. *Fell* v. *McManus*, 1 Atl. 747 (N. J.). *Cf. Culver* v. *Fleming*, 61 Ill. 498. This lien may exist where that on the realty could not. *Bates* v. *Santa Barbara County*, 90 Cal. 543. The principal case, though putting the subcontractor in a better position than the contractor under whom he claims, is in line with previous New Jersey decisions in making the time of serving the notice the test of the subcontractor's right. See *Reeve* v. *Elmendorf*, 38 N. J. L. 125; *Anderson* v. *Huff*, 49 N. J. Eq. 349. It is not unsupported by authority elsewhere. *Russ Lumber & Mill Co.* v. *Roggenkamp*, 35 Pac. 643 (Cal.). But see *Jorda* v. *Gobet*, 5 La. Ann. 431. And it seems just that the right, once accrued, should not be defeated by the contractor's default.

POLICE POWER — REGULATION OF BUSINESS AND OCCUPATION — COMPULSORY INCORPORATION OF BANKS. — A statute of Nevada made unlawful the transaction of a banking business except by means of a corporation. Banking corporations were subject to regulation. By another statute, at least three persons had to associate to form a banking corporation. *Held*, that the statute

requiring incorporation is unconstitutional. *Marymont* v. *Nevada State Banking Board*, 111 Pac. 295 (Nev.).

For a discussion of the principles involved in this case, see 23 HARV. L. REV. 629.

RECEIVERS — LIABILITY OF FOREIGN RECEIVER OF INSOLVENT CORPORATION FOR FRANCHISE TAX. — An insolvent company, incorporated in New Jersey but having its sole office and all its assets in Massachusetts, was in the hands of a receiver appointed by the federal court in Massachusetts, which had permitted him to carry out a beneficial contract. A heavy franchise tax, constituting a prior claim in case of insolvency, was then imposed by the law of New Jersey. *Held*, that the court will not direct the receiver to pay the tax. *Franklin Trust Co.* v. *State of New Jersey*, 181 Fed. 769 (C. C. A., First Circ.).

Penal and revenue laws are of no extraterritorial validity. See *Ballou* v. *Flour Milling Co.*, 67 N. J. Eq. 188; 22 HARV. L. REV. 292. New Jersey, therefore, had no legal claim to be enforced in this proceeding (which, it should be noted, is governed by the general rules of equity and does not come under the Bankruptcy Act). The tax claim must therefore fail unless equitable considerations induce the court, in the exercise of its discretion, to order the receiver to satisfy the demand. But the arbitrary character of this tax does not commend it to equity; indeed a New Jersey court has itself forecasted the present decision. See *Ballou* v. *Flour Milling Co.*, *supra*, 191. In the principal case a dissent proceeds upon the ground that fundamental equitable precepts urge payment here as a return for the privilege of exercising the franchise. The assets, however, were not thereby swelled; and cancellation of the franchise would not have prevented the carrying out of the beneficial contract. See *Lothrop* v. *Stedman*, Fed. Cas. No. 8,519. Thus the refusal of the majority to postpone *bonâ fide* Massachusetts creditors to the state of New Jersey's claim appears to recognize the real equity of the situation.

RESCISSION — RESCISSION FOR FRAUD OR MISTAKE — REPRESENTATIONS MADE THROUGH MERCANTILE AGENCY. — In 1903 the plaintiff bought $5000 worth of stock in the X Co., relying on a report of its financial condition made to Dun & Co., a mercantile agency, by its president, who knew the report was materially false. The plaintiff was not a subscriber of Dun & Co.'s, but obtained the report through a member of a firm which was a subscriber. In 1906 the plaintiff learned the true condition of the X Co.'s finances, offered to return the stock, and demanded the return of his money. Later in that year the company was adjudged a bankrupt. *Held*, that the plaintiff is entitled to prove for $5000 with interest from date of rescission. *Davis* v. *Louisville Trust Co.*, 181 Fed. 10 (C. C. A., Sixth Circ.).

It is established law that a defrauded buyer, after a "rescission *in pais*," may require a restoration of that which he has paid the seller. 1 BIGELOW, FRAUD, 75. Usually one who makes a representation owes no duty, except to the person to whom he is communicating it, to tell the truth. *Western Union Tel. Co.* v. *Schriver*, 141 Fed. 538. However, where reports are filed for the purpose of being consulted by the public, they are representations to any one who may consult them. *Warfield* v. *Clark*, 118 Ia. 69. This is at least partially true when a report is filed with a mercantile agency. *Tindle* v. *Birkett*, 171 N. Y. 520; *National Bank of Merrill* v. *Ill. & Wis. Lumber Co.*, 101 Wis. 247. See 15 HARV. L. REV. 158. Hence in the principal case there would have been no doubt on the authorities had the report been secured directly from the mercantile agency. And the case seems clearly right on principle and authority in holding that no different rule applies because the plaintiff was not a subscriber to the mercantile agency, but got the representation indirectly. See *Genesee County Savings Bank* v. *Mich. Barge Co.*, 52 Mich. 164; *Emerson* v. *Detroit Steel & Spring Co.*, 100 Mich. 127; *Bedford* v. *Bagshaw*, 4 H. & N. 538, 548; *Scott* v. *Dixon*, 29 L. J. Exch. 62.